

AUSTRALIA

*(July 2001 - June 2002)***Table of Contents**

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1. Executive summary

1. This report addresses events occurring in the past Australian financial reporting year (1 July 2001 until 30 June 2002), although later developments have been included where possible.

2. The Government commissioned an independent committee of inquiry to examine the competition provisions of the *Trade Practices Act 1974* (TP Act) and their administration. The inquiry will report to the Government in November 2002.

3. The Government announced its response to several major competition reviews covering prices surveillance, the price regulation of airport services, the National Access Regime and intellectual property protection legislation. The Government also announced proposed amendments to telecommunications competition regulation following the Productivity Commission's (PC) review of Parts XIB and XIC of the TP Act.

4. Australia's National Competition Policy (NCP) framework continued to guide the ongoing development and consideration of competition related issues in 2001-02. The Commonwealth also announced its intention to support enhancing the public interest criteria of NCP, to help to ensure that the interests of rural and regional Australia are properly considered.

2. Changes to competition laws and policies

5. An independent committee of inquiry commenced its review of the competition provisions (Part IV) and the authorisation and notification (Part VII) of the TP Act and their administration. The committee will report in November 2002. The committee is considering whether the TP Act provides sufficient recognition of globalisation factors and the ability of Australian companies to compete globally. It is also considering whether the Act is sufficiently flexible to respond to the transitional needs of certain industries, including those in rural and regional Australia, and whether the Act provides an appropriate balance of power between small and large businesses.

6. The Government released the PC's final report on the review of the National Access Regime on 17 September 2002. Broadly consistent with the report's recommendations, the Government has announced a number of proposed changes to improve the Regime's focus and operation. This includes the clarification of the Regime's objectives and scope, encouraging efficient investment in new infrastructure, strengthening incentives for commercial negotiation, and improving the certainty and transparency of regulatory processes.

7. The Government released the report of the independent review of the *Prices Surveillance Act 1983* (PS Act), and in line with the report's recommendations, the Government announced that it will repeal the Act and incorporate its price restriction provisions and oversight power in the TP Act. An objects clause will provide that price surveillance will only be applied in markets where competitive pressures are not sufficient to achieve efficient prices and protect consumers.

8. In its Regional Statement, "Stronger Regions, A Stronger Australia" of 29 August 2001, the Government proposed measures to help to ensure that rural and regional communities are properly consulted when decisions about NCP matters are being taken, and that their interests are properly considered. The Government has proposed to the State and Territory governments that the current public interest test be enhanced to ensure that the interests of rural and regional communities are taken into account by NCP. Further, to avoid misunderstandings about the operation of NCP, the Government

proposed that the *Competition Principles Agreement* (CPA) be amended to require governments, in undertaking reform commitments, to commit to public consultation where reform is proposed, and public education where reform is implemented. State and Territory governments will also be asked to agree to amending the CPA so that the President of the National Competition Council (NCC) designates a member of the Council to give particular consideration to rural and regional interests. This latter measure has already been undertaken. Discussions between governments are continuing on the other measures, although most jurisdictions have already supported, and in a number of cases have implemented, the majority of the measures.

9. As noted above, the Commonwealth has also sought to have more explicit acknowledgement, within the NCP public interest test, of the importance of consideration of the interests of rural and regional Australia.

2.1 Telecommunications sector

10. On 21 September 2001, the PC reported to the Government on its review of telecommunications-specific competition regulation in Parts XIB and XIC of the TP Act (these provisions establish special regimes in relation to telecommunications competition policy and access). On 24 April 2002, the Government responded to the PC's report and announced its intention to amend XIB and XIC of the TP Act.

11. The Government has agreed with the PC recommendation that the telecommunications-specific parts of the competition regime be retained, and has agreed to a number of recommendations which will enhance its operation. These include amendments to Parts XIB and XIC which will facilitate more timely and transparent access to basic telecommunication services under the telecommunications-specific access regime and address concerns about the ability of the vertically integrated incumbent carrier (Telstra) to price discriminate against retail competitors in the provision of wholesale services. To this end the Government has agreed to the accounting separation of Telstra's retail and wholesale operations, while requiring the Australian Competition and Consumer Commission (ACCC) to report on benchmark terms and conditions for core telecommunication services. The Government's final response to the PC's report will be announced in the near future.

2.2 New guidelines

12. The ACCC continued to produce publications outlining aspects of the TP Act and other competition legislation and also updated and reprinted various guides, including the Franchisees guide and the Advertising and Selling guide. It also published its detailed submission to the review of TP Act. In most cases, publications are available from the ACCC's web site¹.

3. Enforcement of competition laws and policies

13. The general competitive conduct rules in the TP Act prohibit a wide range of anti-competitive practices, such as arrangements which substantially lessen competition (primary boycotts and price fixing are deemed to do so), secondary boycotts, misuse of substantial market power, mergers or acquisitions that may substantially lessen competition and resale price maintenance. In addition, the TP Act contains telecommunications-specific competition rules (as discussed above) and, until 30 June 2002, also contained transitional rules to prevent price exploitation during the introduction of significant taxation reforms.

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14. The ACCC is an independent enforcement agency established under the TP Act. While the ACCC has an important enforcement function, the TP Act also provides for any person to independently seek a remedy from the Court. This right of private action generally enables persons who consider the TP Act has been contravened to approach the Court directly, irrespective of the view of the ACCC².

3.1 *Transitional price exploitation measures covering tax reform implementation*

15. Under Part VB (Price Exploitation in Relation to A New Tax System)³ of the TP Act, the ACCC was given powers to monitor prices, and take enforcement action against businesses engaging in price exploitation in relation to changes under the New Tax System. The legislation came to an end on 30 June 2002.

16. During 2001-02, the ACCC continued to ensure compliance with the New Tax System-related price exploitation provisions of the TP Act. Considerable resources were also devoted to ensuring that businesses did not misrepresent prices by using goods and services tax exclusive price displays. The ACCC continued to provide information to both businesses and consumers about the New Tax System, investigate complaints and, where necessary, take appropriate enforcement action.

17. From July 1999 the ACCC has handled more than 180 000 New Tax System inquiries (just under 5000 during 2001–02), including about 40 000 complaints (around 3500 in 2001–02). Many were found not to be breaches of the TP Act and many were multiple complaints about the same business. Since July 1999 the ACCC has investigated in detail about 6700 New Tax System related matters. As a result, numerous businesses took corrective action to remedy contraventions related to the tax changes, resulting in businesses refunding nearly AU\$18 million for the benefit of approximately two million consumers.

3.2 *Anticompetitive conduct matters*

18. During 2001-02 the ACCC investigated 1374 competition matters. This figure includes all matters where the ACCC sought additional information to establish whether there was a contravention and if ACCC action was appropriate. Of these, some were concluded after initial inquiries and others were investigated in depth. The ACCC took nine restrictive trade practices cases and nineteen price fixing and cartel cases to Court.

3.2.1 *Draft leniency policy*

19. During 2002 the ACCC released its draft policy for the application of leniency to cartel conduct. The policy aims to provide greater certainty for leniency applicants so that the ACCC can better detect and break up hard core cartels operating in Australia. The ACCC is seeking input on this draft policy from all interested parties.

3.2.2 *Transformers case*

20. In May 2002, the Federal Court imposed nearly AU\$22 million in penalties against three companies found guilty of involvement in price-fixing and market-sharing arrangements covering the supply of power transformers and distribution transformers in Australia. Additional court orders were obtained, including injunctions against the corporations and relevant senior management restraining them

from engaging in similar conduct in the future. Proceedings against other transformer companies with similar market shares continue. These companies are contesting the case.

3.2.3 Maritime Union of Australia

21. In November 2001 the Federal Court of Australia ordered the Maritime Union of Australia (MUA) to pay penalties and costs totalling AU\$210,000 for breaches of the secondary boycott (section 45 DB) provisions of the TP Act. The ACCC alleged that the MUA and some of its senior officials had taken unlawful action to prevent or hinder, or attempt to prevent or hinder, vessels from sailing unless MUA labour was used to clean the vessel's holds. The Court also made declarations that the union's conduct constituted undue harassment and coercion in breach of s.60 of the TP Act, the first time that the undue harassment provisions in s.60 had been used outside the consumer protection area.

3.3 Misuse of market power actions

3.3.1 Warner Music Australia Pty Ltd and Universal Music Australia Pty Ltd

22. In December 2001, the Federal Court of Australia determined that Warner Music Australia Pty Ltd and Universal Music Australia Pty Ltd had breached sections 46 and 47 (the misuse of market power and exclusive dealing provisions) of the TP Act by threatening to withdraw trading benefits from CD retailers who stocked parallel imports. The conduct followed amendments to the *Copyright Act 1968* to allow the parallel importation of CDs. In March 2002 the Court imposed penalties of AU\$450,000 and permanent injunctions on each of Universal and Warner, and between AU\$45,000 and AU\$50,000 each on senior executives of the companies. The companies have appealed the decision, whilst the ACCC has appealed the level of penalties. The appeal will be heard in November 2002.

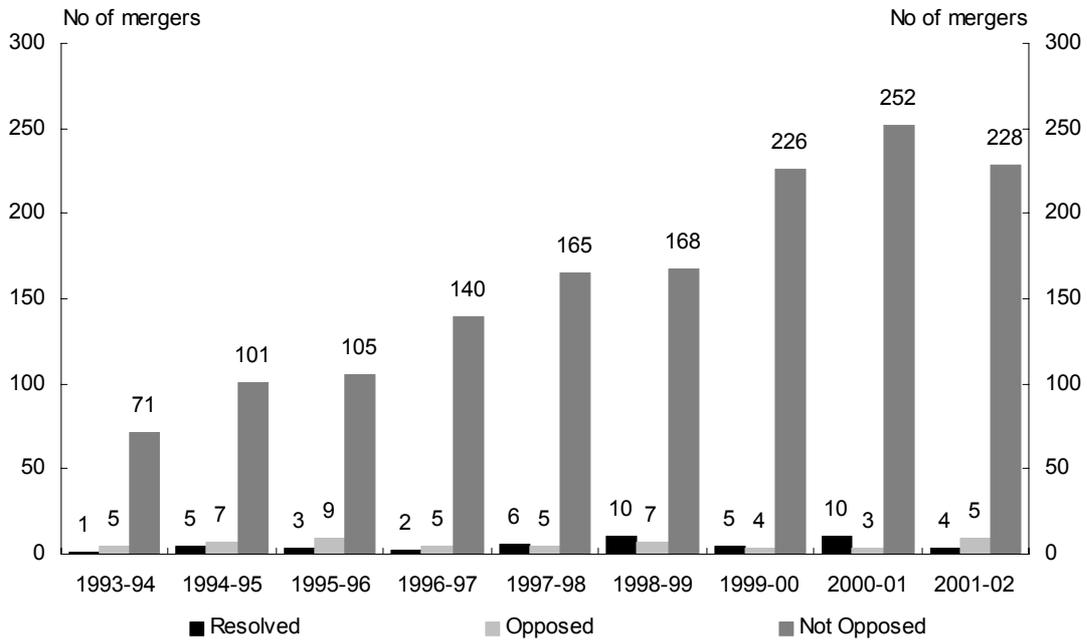
3.4 Mergers and acquisitions

23. Analysis of mergers and acquisitions constitute an important part of the ACCC's work. A merger or acquisition is prohibited under section 50 of the TP Act where it has the effect, or would be likely to have the effect, of substantially lessening competition in a market.

24. In 2001-02 the ACCC considered 237 mergers, asset sales and joint ventures. Of these the ACCC objected to nine on the basis that they were likely to substantially lessen competition. Four of these proceeded following the provision of enforceable undertakings to the ACCC under section 87B of the TP Act. One matter was resubmitted for authorisation and one matter was withdrawn following concerns expressed by the ACCC. No mergers were considered by the Courts during the period.

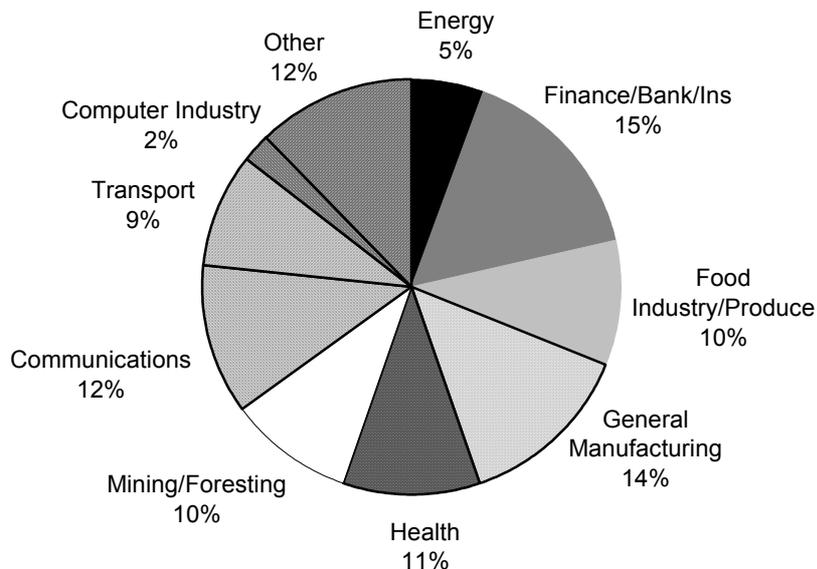
25. Chart 1 below highlights the small percentage of merger matters the ACCC has opposed. It shows that the number of matters where a substantial lessening of competition would, or was likely to, occur, in the ACCC's view, has been stable at around four to five per cent for several years. Chart 1 also shows the number of merger matters considered in 2001-02 has eased, consistent with wider marketplace trends.

Chart 1 - Mergers not opposed, opposed and resolved with the ACCC



26. Chart 2 shows merger matters considered in 2001–02 by industry. Transport and health industry transactions formed a larger proportion of mergers considered than in the previous year while the proportion of communications, mining/forestry and finance/banking matters remained broadly stable.

Chart 2 – Percentage of mergers by industry



27. Contact between competition agencies internationally has increased in recent years due to major mergers and acquisitions among transnational firms. Discussions continue about how to increase

competition policy effectiveness in the era of globalisation. Linkages between Australian and US, European and Asian competition policy agencies are growing rapidly. Australia, through the ACCC, is making constructive contributions to the growing international dialogue in this area.

28. One avenue through which this is occurring is the International Competition Network (ICN), whose Merger Review Working Group is addressing the challenges of merger review in a multi-jurisdictional context. The ACCC is an active contributor to the group, which is developing best practice recommendations on: procedures, including timing, for reviewing multi-jurisdictional mergers; analytical frameworks for merger review; and investigative techniques for conducting effective merger review.

29. The ACCC regularly communicates with its counterpart agencies when asked to assess the implications of international mergers and acquisitions. These discussions often relate to technical aspects, such as the appropriate market definition, barriers to entry and emerging market dynamics.

30. Two major merger matters considered by the ACCC in 2001-02 are discussed below.

3.4.1 Compaq and Hewlett-Packard

31. The ACCC did not oppose the merger between Compaq Computer Corporation and the Hewlett Packard Company which was also cleared by the Federal Trade Commission in the US, the European Commission and the NZ Commerce Commission. Although the ACCC's concentration threshold for the exercise of unilateral market power was crossed in relation to servers and printers, the ACCC considered that the acquisition was unlikely to result in a substantial lessening of competition as the two firms operate in markets characterised by high imports, strong global competition, technological innovation/convergence and customers exercising countervailing power.

3.4.2 Foxtel and Optus

32. The ACCC is currently assessing whether to accept the enforceable undertakings provided in response to its competition concerns about proposed arrangements by Foxtel and Optus in relation to pay television. In their original form the arrangements were likely to substantially lessen competition in a number of markets.

33. The ACCC is concerned that the proposed arrangements between Foxtel and Optus raises significant competition concerns beyond the market for retail pay television services, particularly given that Optus is both the number two telecommunications and pay television provider in the markets which Foxtel currently serves. Both Foxtel and Optus have argued there are significant benefits associated with the arrangements and have provided draft enforceable undertakings, which will be subjected to an inquiry process.

3.5 Pricing matters

3.5.1 Air transport

34. Until October 2001, the ACCC was responsible for the economic regulation of Sydney Airport as well as 11 privatised airports. These airports were declared under the PS Act, and with the exception of Sydney Airport, were subject to CPI-X price caps. In October 2001, the Government revoked the

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declaration applicable to Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville airports. These airports are no longer required to notify the ACCC of proposed increases in charges for aeronautical services.

35. In May 2002, the Federal Government released the PC report *Price Regulation of Airport Services*, agreeing to the report's recommendations that Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports be subject to price monitoring for five years (see Part V). The arrangements took effect from 1 July 2002. An independent review will be carried out towards the end of the five-year period to ascertain the need for future airport price regulation.

36. From 1 July 2002, the ACCC's responsibilities have included: monitoring of prices for aeronautical and aeronautical-related services at Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports; monitoring service quality at these airports; and collecting and publishing information on the airports' financial performance.

3.5.2 *Harbour towage*

37. The provider of towage services at major ports has been required to notify the ACCC of proposed price increases. The price notification requirement was due to expire in September 2002. In March 2002, the Federal Government asked the PC to conduct an inquiry into harbour towage. The PC was asked to report on: the impact of structural reforms on harbour towage and related services; whether any other measures could be taken to increase competition in the provision of these services; and whether there is continuing need for towage price oversight. The Government is expected to release its response to the PC's final report in 2002-03.

3.6 *Access to infrastructure facilities*

38. Under NCP, Commonwealth, State and Territory Governments must legislate to allow third party access to services provided by essential infrastructure facilities. While the addition of Part IIIA to the TP Act in 1995 provided for a National Access Regime, the States and Territories also have in place procedures for establishing access regimes. In addition to these measures, there are a number of industry-specific access regimes, including the telecommunications-specific access regime under Part XIC of the TP Act.

3.6.1 *Access hearings*

39. In August 2001, the High Court rejected Foxtel's application for special leave to appeal the Federal Court decision of August 2000 which upheld the validity of an earlier ACCC analogue pay-TV service declaration. The High Court held that there were insufficient grounds for Foxtel to appeal the August 2000 decision, validating the ACCC's analogue pay-TV service declaration. Subject to capacity, telecommunications carriers are now required to provide access to their Hybrid Fibre Cable networks to supply analogue pay-TV. Though digital pay-TV services have begun to emerge in Australia, the ACCC has made no decision on whether these services should be declared.

3.6.2 Telecommunications

40. In April 2002, the ACCC widened the GSM mobile services declaration to include CDMA mobile services.⁴ There are currently two types of digital mobile service networks in Australia — GSM and CDMA. However, the original GSM mobile declaration did not include CDMA, as CDMA networks were not in use when the current regulatory regime was introduced.⁵ The declaration should ensure a more even and consistent approach to the regulation of mobile services. As with GSM mobile services, there are concerns regarding the limited competitive forces constraining the provision of the wholesale CDMA service and the ability of integrated mobile carriers to restrict price competition in the downstream market for fixed-to-mobile calls. Varying the GSM declaration to include CDMA services will reduce opportunities for anti-competitive pricing and encourage lower fixed-to-mobile call prices. The decision does not cover third generation technologies, as there is no current market in operation for these services.

3.6.3 Natural gas pipelines

41. The main aim of the NCP commitments is to remove all legislative and regulatory barriers to the free trade of gas both within and across State boundaries, and to provide for third party access to gas pipelines. In the past year a Third Party Access Regime for the Northern Territory was certified as effective. This Regime, which will remain in force for a period of fifteen years, establishes a framework for a third party to obtain access to natural gas pipelines in that jurisdiction.

42. Over the past year the ACCC has assessed nine access arrangements under the *National Third Party Access Code for Natural Gas Pipeline Systems* (Gas Code).

43. The ACCC issued two final approvals, one for the Wallumbilla to Gladstone via Rockhampton pipeline and one for the Ballera to Wallumbilla pipeline. The service provider for the Wallumbilla to Gladstone pipeline, Duke Energy appealed the ACCC's decision to the Australian Competition Tribunal (the Tribunal), asserting that the ACCC did not have the authority to include a trigger mechanism. On 10 May 2002, the Tribunal held that the ACCC retained the authority to include a trigger mechanism.

44. The ACCC released final decisions for proposed access arrangement for the Moomba to Adelaide, Ballera to Mount Isa and Wallumbilla to Brisbane pipeline systems. The ACCC is in the process of making Final Decisions for proposed access arrangements for the Moomba to Sydney and the Amadeus Basin to Darwin pipelines. (Draft decisions have been released for these access arrangements.)

45. Two access arrangements were received for the Victorian Principal Transmission, lodged by the pipeline owner, GasNet, and by the pipeline operator, VENCORP. Public consultation has been conducted and the ACCC is preparing draft decisions.

3.6.4 Railways

46. Under the TP Act's access provisions, services may not be declared if the ACCC has already accepted an access undertaking from a service provider. In May 2002, the ACCC accepted its first rail track access undertaking in accordance with Part IIIA of the TP Act, lodged by the Australian Rail Track Corporation (ARTC). The ARTC was established following a 1997 Intergovernmental Agreement between the Commonwealth, State and Territory governments. Its primary objective is to promote use of Australia's national rail network linking all capital cities by providing a single point of access to providers of rail freight services whose operations traverse State or Territory jurisdictions. The access undertaking

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provides a framework for the conduct of negotiations between ARTC and train operators who wish to obtain access to the network.

3.7 *Authorisation decisions and notifications*

47. The TP Act provides immunity from legal proceedings for contraventions of the general competitive conduct rules, except for misuse of market power, under one of two administrative procedures. Under the *authorisation* procedure, the ACCC is empowered to grant immunity when satisfied that the conduct will be likely to result in a net public benefit. Under the *notification* procedure, a party which notifies exclusive dealing to the ACCC obtains automatic immunity when the notice comes into force. ACCC decisions to revoke notifications are reviewable by the Tribunal, upon application. The number of ACCC determinations processed in 2001-02, compared to relevant figures for the two preceding periods, are shown in Table 1.

Table 1: Adjudication matters considered

	Tribunal reviews			Authorisations			Notifications		
	01-02	00-01	99-00	01-02	00-01	99-00	01-02	00-01	99-00
Previously under consideration	0	1	3	28(83)	64	74	63	38	20
New applications/notices	3	0	1	18(36)	53	47	287	345	344
Withdrawn	2	0	2	1(1)	5	7	1	2	1
Decided	1	1	1	19(51)	30	50	281	318	325
Unresolved as at 30 June	0	0	1	26(67*)	83 ^(a))	64 ^(b))	69	63	38

Figures in brackets indicate total applications including electricity and gas matters.

* *Total figure includes 30 applications relating to electricity distribution and marketing arrangements and 11 applications relating to gas distribution and marketing arrangements.*

(a) *Total figure includes 43 applications relating to electricity distribution and marketing arrangements and eleven applications relating to gas distribution and marketing arrangements.*

(b) *This figure includes thirty applications relating to electricity distribution and marketing (previous years: 43 & 34) and ten applications relating to gas distribution and marketing arrangements (previous years: 10 & 22).*

3.7.1 *Aviation*

48. The ACCC, in consultation with the International Air Transport Association (IATA), is reviewing authorisations granted 17 years ago covering IATA's activities. In May 2001 IATA lodged an application to revoke an authorisation dealing with IATA's Passenger Agency Program and the issue of a substitute authorisation. The IATA Program provides a system for sale and distribution of air transport through travel agencies, and is based on resolutions passed by IATA's airline members as they relate to arrangements between airlines and travel agents in Australia.

49. On 13 May 2002 the ACCC issued a draft determination which proposed to authorise the Program subject to a number of conditions. The ACCC proposed conditions addressing aspects of the

Program which could impact on the financial position of agents at a time when the travel and aviation industries are under significant pressure. A pre-decision conference was held in July 2002 in response to the ACCC's draft determination. The ACCC expects to commence work on the review of IATA's other activities including passenger services, passenger tariff coordination and air cargo in late 2002.

3.7.2 Dairy

50 On 12 March 2002 the ACCC issued a final determination granting authorisation to the Australian Dairy Farmers' Federation (ADFF) to allow groups of dairy farmers to collectively negotiate pricing and supply arrangements with dairy processing companies. The authorisation expires on 1 July 2005 and is subject to a number of conditions.

51. The ACCC considered that the conditional authorisation of collective bargaining by dairy farmers would be of public benefit, as it is likely to increase competition in the supply of raw milk by allowing dairy farmers to take advantage of additional market opportunities.

52. A major dairy processing company, National Foods Limited, subsequently applied to the Tribunal for review of the ACCC's decision. On 16 August 2002, the Tribunal made a determination by consent of National Foods Limited, the ACCC and the ADFF. The determination varied the conditions of the ACCC's authorisation, and authorised dairy farmers to form collective bargaining groups, through which they may negotiate terms of supply for raw milk with dairy processors, subject to those conditions.

4. The role of competition authorities in the formulation and implementation of other policies

53. The Commonwealth, State and Territory Governments agreed to implement the NCP in 1995. NCP has several elements, including the review of legislation that restricts competition or imposes costs on business and the provision of access to significant infrastructure facilities. While considerable progress has been made in implementing NCP, significant reforms are continuing. These include implementation of specific water and energy reform commitments and the reform of the remaining statutory agricultural marketing arrangements, retail trading arrangements (including liquor licensing arrangements), taxi licensing, the regulation of the professions and mandatory insurance arrangements (e.g. workers compensation and transport accident insurance). The Government has announced it will examine streamlining Australia's various workers' compensation and occupational health and safety schemes.

54. Competition policy is the responsibility of the Department of the Treasury within the Commonwealth Government, the Premier's Department in each State and the Chief Minister's Department in each Territory.

55. The ACCC is an independent statutory authority charged with, *inter alia*, administering the TP Act and the PS Act. The NCC is also an independent authority, which provides national oversight of NCP. Another significant body at the national level is the PC, which is an independent Commonwealth agency that undertakes public inquiries in response to terms of reference provided by the Commonwealth Government. Most State and Territory governments maintain competition units and have appointed independent pricing regulators. Further information on the roles of the national authorities is available on their Internet sites⁶.

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4.1 *Legislation reviews*

4.1.1 Deregulation

56. In 1996, Commonwealth, State and Territory governments agreed to review legislation that restricts competition by the end of 2000. In November of that year, CoAG agreed to extend this deadline to 30 June 2002.

57. The PC completed its reviews of superannuation legislation and the PS Act and its review of fees charged under the TP Act. The PC found that the current charges under the TP Act appear to have little, if any, impact on competition and economic efficiency, and made no recommendation to change the legislation. The Government accepted this finding. The Government released its final response to the review of the PS Act (see Part I) and its interim response to the PC's report on superannuation legislation.

58. The Government released the PC's final report on the review of the National Access Regime on 17 September 2002, and announced its interim response. The Government also received the PC report of the review of local government exemptions under the TP Act on 16 August 2002, and is considering the report's recommendations. During 2000-2001 the PC reviewed Parts XIB and XIC of the TP Act as part of its Review of Telecommunications Specific Competition Regulation. The PC's final report was handed to Government in September 2001.

59. The Government announced its response to the NCP review of intellectual property protection legislation (see also Part V). Further legislative amendments will be introduced into the Australian Parliament in 2002. Consistent with the report's recommendations on removing restrictions on parallel importation, the Government proposed permitting the parallel importation of books (including printed music), computer programs and periodical publications.

4.2 *Other reforms*

4.2.1 Water

60. At its April 2002 meeting, CoAG noted that substantial progress is being made on national water reforms, and that water has been a key driver in regional and national development. Commonwealth, State and Territory Governments have continued to implement the strategic framework for the efficient and sustainable reform of the Australian water industry. This involves the adoption of urban and rural water charges that reflect cost recovery, the establishment of a system for determining and trading water entitlements and the provision of water allocation to the environment.

61. Price reform in urban areas is now virtually complete, with water now priced to encourage efficient water service provision and use and residential and commercial consumers only paying for water actually consumed. Rural pricing reform has seen all Governments establish reform paths to institute efficient water pricing, ensure adequate water allocations to the environment, and to provide clear water property rights, separate from land title. Irrigators are charged for water use on a volumetric basis, where possible, and cross subsidies are being eliminated or being made transparent. Water trading arrangements are also being extended and expanded and the volume and value of trade is growing.

5. Resources of competition authorities

62. The ACCC's budgeted staffing level for 2001–02 was 509 (up from 437 in 2000-01), including six full-time holders of public office (ACCC members). In addition there are 12 associate members; eight of these are ex-officio, being economic regulators from other Commonwealth or state and territory bodies. The actual average level of staff employed during the year was 478.2 (up from 438.1 in 2000-01) while the actual number of employees (including part-time employees) at 30 June 2002 was 540 (482 on June 2001). The increase in average staffing levels rose from increased activity in rural and regional Australia, the professions, telecommunications and the growth of the national first-point-of-contact centre, the ACCC Infocentre.

63. Of the 540 employees employed at 30 June 2002, 29 were engaged to work on aspects of the ACCC's price exploitation monitoring function for the New Tax System (down from 43 at 30 June 2001).

64. Funding of AU\$73.4 million was provided to the ACCC in the 2001-02 budget, and included funding for: tax reform monitoring; airport regulation; additional functions and powers under the *Telecommunications Legislation Amendment Act 1999*. The ACCC received an additional AU\$10 million towards a litigation reserve fund, set up to enable the ACCC to meet unusual litigation costs. This fund will increase by AU\$1 million per year until it reaches a cap of AU\$20 million.

65. Additionally, the NCC's funding increased from AU\$3.28 million in 2000-01 to AU\$3.6 million in 2001-02. Staffing levels have not changed, with twenty persons currently employed as economists, lawyers, other professionals and support staff.

Table 2 – Annual Budgets (\$million)

	ACCC			NCC		
	01-02	00-01	99-00	01-02	00-01	99-00
AU\$	73.4	75.6	56.5	3.6	3.3	3.3
USD ⁷	40.4	41.6	31.1	2.0	1.8	1.8

6. Studies and reports

6.1 *Productivity Commission inquiries, reports and publications*

66. The PC released reports of several major Government commissioned reviews, including Telecommunications Competition Regulation (see Part I), Price Regulation of Airports Services (see discussion in Part III and below) and the review of the PS Act (see Part I). The PC has also investigated the competitive situation and outlook for the citrus growing and processing industry and the impact of structural reforms, the competitiveness of, and the need for prices oversight in the harbour towage industry.

67. As part of its research programme, the PC released *Structural Adjustment — Key Policy Issues*, which examined policy issues arising from structural changes induced by microeconomic reforms in Australia.

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6.2 *ACCC report on health insurance issues*

68. Australia operates a free universal public health care system for all residents, supplemented by a private system allowing consumers wider choice at additional cost. The additional cost incurred by utilising the private system may be covered in whole or in part by consumers taking private health insurance cover: currently around 45 per cent of Australians have such cover as a result of Government initiatives. On 25 March 1999 the Australian Senate ordered the ACCC to report every six months on its assessment of 'any anti-competitive or other practices by health funds or providers which reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses'.

69. The ACCC instituted proceedings in November 2001 against several companies alleging misleading and deceptive advertising of health insurance products. In its report to 31 December 2001, the ACCC raised concerns that some in the medical profession did not appreciate the significance of cost as an important consideration in the provision of specialist care and that patients may not have been adequately informed about the commercial or financial interests of medical practitioners when they refer patients to other practitioners.

6.3 *Price regulation of airport services*

70. As noted in Part II, the Government has directed the ACCC to undertake monitoring of the supply of aeronautical and aeronautical-related services at Brisbane, Melbourne, Perth, Sydney (Kingsford Smith), Adelaide, Canberra and Darwin airports. This replaces the CPI-X price cap regime that previously applied at these airports, with the exception of Sydney, which was subject to a system of prices notification.

71. The PC's report on airport price regulation also recommended that there were insufficient grounds for an airport-specific access regime as the general access provisions available under Part IIIA of the TP Act (and Part IV) provide sufficient safeguards for those seeking access to airport facilities. The Government has accepted the PC's recommendation and will repeal the existing access provisions of the *Airports Act 1996*.

6.4 *Intellectual Property and Competition Review Committee*

72. A Committee was established in 1999 to inquire into and report on the effects on competition of Australia's intellectual property laws. The review covered the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Designs Act 1906*, the *Copyright Act 1968* and the *Circuit Layouts Act 1989*. The Committee released its final report in December 2000.

73. On 28 August 2001 the Government announced its response to the Committee's report. The changes announced to the intellectual property system are designed to make it more responsive to the needs of rights holders and users in the private and public sector, and provide a better balance with competition policy. One specific change announced is to amend the current limited exception for intellectual property licensing from competition laws to better balance the needs of the intellectual property system and competition policy. Prior to that amendment taking effect, the ACCC will issue guidelines on the application of competition law to intellectual property.

74. On 27 June 2000 the Government announced its intention to amend the *Copyright Act* to allow parallel importation of books, periodicals, printed music and software products, including computer-based games. The *Copyright Amendment (Parallel Importation) Bill 2002* is currently before Parliament.

6.5 *Review of price control arrangements for telecommunications*

75. Following the ACCC review of the price control arrangements applying to Telstra under Part 9 of the *Telecommunications (Consumer Protection Standards) Act 1999*, on 22 April 2002 the Government announced changes to the telecommunications price control regime. These include a rebalancing of line rental and call prices, recognising that some rebalancing of these charges was necessary to maintain an open and competitive industry, while putting in place specific measures to appropriately protect low-income earners.

7. Glossary

- ACCC Australian Competition and Consumer Commission
- CoAG Council of Australian Governments
- CPA *Competition Principles Agreement*
- ICN International Competition Network
- NCC National Competition Council
- NCP National Competition Policy
- PC Productivity Commission
- PS Act *Prices Surveillance Act 1983*
- TP Act *Trade Practices Act 1974*
- Tribunal Australian Competition Tribunal

1 www.accc.gov.au

2 Only the ACCC may seek an injunction to prevent a merger or acquisition.

3 With State and the Northern Territory mirror legislation, the Part created the National Price Exploitation Code.

4 GSM (global system for mobile) and CDMA (code division multiple access) are both digital mobile transmission systems. The key differences that exist between GSM and CDMA networks pertain to the spectrum required; cell size; cell coverage; how the spectrum is used to transmit information; and spectrum re-use.

5 GSM services were “deemed” to be declared at the inception of the current telecommunications regulatory regime in July 1997.

6 www.pc.gov.au ; www.ncc.gov.au

7 Calculated at rate \$A1 = USD 0.55